

**CM No.27079-CII of 2014 in
FAO No.3202 of 2009 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No. 213

**CM No.27079-CII of 2014 in
FAO No.3202 of 2009 (O&M)
Date of decision: May 01, 2017**

AZAD

... APPLICANT/APPELLANT

Versus

RAM DHAN AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. J.S. Yadav, Advocate,
for the applicant-appellant.

Mr. S.K. Yadav, Advocate,
for respondent No.2.

Mr. Pardeep Goyal, Advocate and
Mr. Abhishek Goyal, Advocate,
for respondent No.6.

JASPAL SINGH, J.

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This order dispose of an application moved by the applicant-appellant under Order VI Rule 17 CPC read with Section 151 CPC for conversion of claim petition from Section 163-A of Motor Vehicle Act,

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1988 (for short 'Act') to Section 166 of the Act.

2. Undisputably, applicant/appellant preferred a claim petition under Sections 140/163-A/166/168-A of the Act seeking compensation on account of injuries sustained by him in a motor vehicular accident. But later on when a preliminary objection was raised by the respondent in written statement, applicant/appellant moved an application under Order VI Rule 17 CPC for amendment of claim petition before Motor Accident Claims Tribunal, Panipat (for short 'Tribunal') under Section 163-A from Sections 140/163-A/166 and 168-A of the Act, which was allowed by learned Tribunal vide order dated April 25, 2007 and income of applicant/appellant was slashed down to ₹3200/- per month. Ultimately, claim petition was dismissed vide impugned Award dated July 17, 2008.

3. Aggrieved against the dismissal of claim petition, applicant/appellant has already preferred an appeal, which is pending disposal.

4. The contention of learned counsel for the applicant/appellant is that learned Tribunal while dismissing an appeal has categorically observed that accident had occurred due to rashness and negligence driving of Trola bearing registration No. HR-556-7545 by its driver namely Ram Dhan but while dealing with an issue regarding grant of compensation, claim petition has been dismissed on account of reason that applicant-appellant claimed his income ₹3200/- per month instead of ₹3500/- per month, while appearing in the witness box in support of his claim. Now

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through instant application, applicant/appellant intends to convert claim petition from Section 163-A to Section 166 of the Act.

5. This application has been hotly resisted by respondent No.6 on the ground that conversion is not permissible especially in the circumstances that applicant/appellant earlier got converted this claim petition under Section 163-A from Sections 140/163-A/166 and 168A of the Act and further that he wants to fill up lacuna just to extract compensation.

6. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, this Court does not find any merit in the submission made by learned counsel for the applicant/appellant.

7. Undisputably, originally claim petition was filed under Sections 140/163-A/166 and 168A of the Act by applicant/appellant and at his request, it was converted to a claim petition under Section 163-A of the Act. He led the evidence and addresses the arguments before learned Tribunal but when claim petition was dismissed vide Award dated July 17, 2008, he moved instant application.

8. Instant application is nothing, but to fill up lacuna to claim compensation under Section 166 of the Act, that too at the appellant stage after dismissal of claim petition on technical grounds. Moreover, if the relief sought is granted it would change the entire nature and character of the matter in controversy, which is not permissible under law. Thus, instant application being devoid of merits is dismissed.

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Instant appeal has been preferred by appellant/claimant-Azad feeling dissatisfied against impugned Award dated July 17, 2008, whereby a claim petition preferred by him titled as “Azad vs. Ram Dhan and ors., MACT RBT Case No.21 of 2008, under Section 163-A of the Act, seeking compensation on account of injuries sustained by him in a motor vehicular accident which took place on September 01, 2003 at 4.30 A.M. in the area of Village Dudu, near Nansoda, falling within the jurisdiction of Police Station Dudu, District Jaipur Gramin.

2. The contention of the learned counsel for the appellant/claimant is that no doubt an application moved for conversion of claim petition from under Section 163-A to under Section 166 of the Act has been dismissed by the court. But, dismissal of the claim petition vide impugned Award dated July 17, 2008 is not legally and factually justified. In fact, impugned Award is absolutely against evidence available on file and settled canons of law. Mis-appreciation of legal proposition applicable to the facts and circumstances of the instant case has resulted into miscarriage of justice.

3. Undoubtedly, appellant was allowed to pursue claim petition under Section 163-A of the Act but learned Tribunal has dealt with said claim petition considering the same to be one under Section 166 of the Act. As per Section 163-A of the Act, no evidence is required to be led and compensation has to be granted on the principles of no fault liability. Though, it has been held by learned Tribunal while rendering findings on

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issue No.1 that accident in question took place due to use of motor vehicles i.e. Trolly No. HR-556-7545 and Truck No. HR-46-7651, in which, appellant sustained injuries but compensation has been declined on the ground that appellant initially claimed his salary to the tune of ₹3500/- per month and after conversion of petition under Section 163-A of the Act, he again reiterated during his cross-examination that he was getting salary from owner of the truck @ ₹3500/- per month. As such, his income exceeds ₹40,000/- per annum. Thus, he is not entitled to invoke the provisions of Section 163-A of the Act. But once appellant has already been allowed by learned Tribunal to pursue his claim petition under Section 163-A of the Act, it should have been taken that appellant has slashed his income to the tune of ₹40,000/- per annum. As such, by considering income of appellant to be ₹40,000/- per annum, he deserves to be paid compensation to which he is legally entitled.

4. On the other hand, learned counsel for the respondent No.6 has submitted that dismissal of claim petition is legally and factually justified. It is well settled law that for invoking provisions contained in Section 163-A of the Act, income of the injured/victim should not exceed ₹40,000/- per annum and if it is more than the prescribed limit, no claim petition is legally maintainable under Section 163-A of the Act. Thus, learned Tribunal has rightly dismissed claim petition. Instant appeal being devoid of merits is liable to be dismissed.

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5. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, appraisal of record and scrutinizing impugned Award dated July 17, 2008, this Court is of the considered view that there is no infirmity, illegality or perversity in the aforesaid impugned Award and same is absolutely in consonance with the settled proposition of law applicable to the facts and circumstances of the case in hand.

6. Undisputably, initially claim petition was preferred by appellant-Azad under Sections 140/163-A/166 and 168A of the Act seeking compensation on account of injuries sustained by him. But subsequently, when a preliminary objection was raised by respondent No.6 in the written statement that claim petition is not maintainable as appellant/claimant has not specified as to under which provision(s) of the Act he seeks compensation, appellant/claimant got amended claim petition and opted to proceed under Section 163-A of the Act. On the basis of evidence adduced by appellant/claimant, it was held that accident occurred involving truck No.HR-46/7651 and Trolly No.HR-556-7545 but learned Tribunal declined grant of compensation considering that claim petition under Section 163-A of the Act is not maintainable as admitted income of claimant/injured exceeds ₹40,000/- per annum. As an application bearing CM No.27079-CII of 2014 moved by the applicant/appellant for conversion of claim petition under Section 163-A to under Section 166 of the Act, claim petition was treated under Section 163-A of the Act, which has been dismissed by

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learned Tribunal.

7. The controversy which is involved in the instant case, earlier arose before Hon'ble Supreme Court in case ***Deepal Girishbhai Soni & ors. Vs. United India Insurance Company Limited, 2004(2) R.C.R. (Civil) 466*** in which it was held as under:-

“That Section 163-A of the Act are in the nature of social provision providing for a distinct scheme and only those persons whose annual income is up to ₹ 40,000/- could take the benefit thereof and other claims were required to be determined in terms of Chapter XII of the Act.”

8. Similarly, in another case ***Himachal Road Transport Corporation and another vs. Baldev Kumar Nayyer and ors., IV(2006) ACC125***, the Division Bench of this Court held as under:-

“That Tribunal cannot treat the petition filed under Section 166 of the Act under Section 163-A by restricting the income to ₹40,000/-. In the said case, this Court by placing reliance on Deepal Girishbhai Soni's case (supra) set aside the award passed under Section 163-A of the Act and remanded the case back for decision on the petition filed under Section 166 of the Act in accordance with law.”

9. A glance at the aforesaid authoritative pronouncements makes it crystal clear that claimant or injured cannot be allowed to notionally scale down his income so as to enable himself to seek benefit enshrined in Section 163-A of the Act. He cannot be permitted to defeat the object of Section 163-A of the Act by scaling down his income.

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10. Adverting to the facts of the instant case, claim petition was initially filed under Sections 140/163-A/166 and 168A of the Act but subsequently by way of amendment of the petition, it was converted to Section 163-A of the Act. For the grant of compensation in a petition under Section 163-A of the Act, income of the injured or deceased should not exceed ₹40,000/- per annum but appellant while subjected to cross-examination has categorically admitted that during his employment as Driver with Surinder Singh, owner of truck, he has been getting ₹3500/- per month as salary which comes out to be more than ₹40,000/- per annum on calculation. As such, he stands debarred from invoking provisions contained in Section 163-A of the Act. Thus, this Court is of the considered view that learned Tribunal has rightly declined compensation and dismissed claim petition vide impugned Award dated July 17, 2008. Since, impugned Award is absolutely in consonance with settled provisions of law, no interference by this Court is justified.

11. As an upshot of the aforesaid discussion, this Court does not find any merit in instant appeal. Accordingly, same is dismissed, whereby impugned Award dated July 17, 2008 is upheld.

12. No order as to costs.

May 01, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether Speaking/Reasoned
Whether Reportable**

**Yes/No
Yes/No**